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S E C R E T SECTION 01 OF 05 TEL AVIV 001272

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COMMERCE FOR UNDER SECRETARY DAVID MCCORMICK  
STATE FOR UNDER SECRETARY ROBERT JOSEPH  
STATE FOR ISN/ECC DIRECTOR (VAN-SON) AND NEA/IPA (MAHER)  
PENTAGON FOR OSD ISRAEL DESK OFFICER (ANDERSON)

E.O. 12958: DECL: 03/27/2016

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SUBJECT: EXPORT CONTROLS: COMMERCE U/S MCCORMICK'S MARCH 9  
MEETINGS AT THE ISRAEL MOD

Classified By: Political Counselor Norm Olsen. Reasons: 1.4 (b, d).

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SUMMARY  
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1. (S) Israeli Defense Ministry officials told Commerce Under Secretary for Industry and Security David McCormick March 9

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that (A) the MOD has assumed the lead role in re-organizing Israel's export control system in the wake of hi-tech transfer scandals that plagued the U.S.-Israel relationship through 2005; (B) Israel is committed to making meaningful changes to its export control system in order to restore the USG's trust in Israel's export controls; and (C) Israel is adhering to its obligations under the August 2005 Statement of Understanding (SOU). The Israelis noted lingering perceptions that the U.S. is using the export control issue to edge out Israeli competition in Venezuela's defense market. They also suggested a joint U.S.-Israel effort to penetrate India's defense market, and requested expedited USG approval of some proposed Israeli contracts for bids in China that would benefit U.S. and Israeli companies. Under Secretary McCormick reinforced the importance of the SOU and

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said that while early signs are encouraging, Israel is at the beginning of a long road of putting comprehensive export controls in place.

2. (C) SUMMARY, CONT.: In an expanded meeting in which the Israeli MOD team was led by the MOD's chief legal counsel, the Under Secretary was told that the MOD has already amended export control regulations. Wassenaar Arrangement Category Six controls have been incorporated into the MOD's control lists, and new dual-use regulations/legislation will lead to Israel's adoption of the remaining nine Wassenaar Arrangement categories, and will turn over export license issuance to the MOITAL in cases where the end-user is a civilian entity. Two new pieces of legislation will clearly define the process whereby export license applications are reviewed, define a clear procedure for dispute resolution, and include provisions for appeals in case of denial. In addition to the lengthy discussion of changes that have already been made or are planned, the MOD engaged the Under Secretary on the Committee for Foreign Investment in the U.S. (CFIUS). After his meetings at the MOD, the Under Secretary had similar meetings at the MOITAL and MFA (reported septel). END SUMMARY.

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MOD UNDERSCORES ITS COMMITMENT TO EXPORT CONTROLS  
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3. (S) Under Secretary McCormick's session at the MOD began with a private meeting with Israeli MOD Export Department (SIBAT) Director retired Major General Yosi Ben Hanan. Ben Hanan said Israel is very keen to fulfill all of its commitments under the August 2005 Statement of Understanding (SOU) on defense export controls. He stressed that Israel never intended to hurt the U.S. as a result of its exports to China, and characterized as "very sobering" the atmosphere surrounding the U.S.-Israel relationship after the U.S. "called Israel to account." Ben Hanan recounted that the GOI conducted investigations and found "minimal violations" of export control policy. His sense was that the discussions afterwards rightly focused on policy, as the disagreement, he claimed, was over policy, not about criminal behavior. Under Secretary McCormick reinforced the importance of the SOU and

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said that while early signs have been encouraging, Israel is at the beginning of a long road of putting comprehensive export controls in place.

4. (S) Ben Hanan said that Israel is strictly adhering to the SOU, despite media allegations otherwise. (He cited as an example a controversial quote about the SOU attributed to MOD DG Jacob Toren, recently published by what Ben Hanan referred

to as a "second-rate newspaper that professionalizes in scandal-mongering.") Ben Hanan said that the MOD plans to reassign SIBAT's export licensing authority to an Export Controls Division in the MOD. (NOTE: SIBAT currently issues 4,000-5,000 export licenses per year. END NOTE.) Ben Hanan said he will still have influence on the licensing process, but will not have statutory authority to sign licenses. He added that SIBAT will still sign licenses for export negotiations.

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BEN HANAN ON ISRAELI DEFENSE EXPORTS TO THIRD COUNTRIES  
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15. (S) Ben Hanan said that the GOI has made it clear to the Israeli defense industry that all defense exports to China must adhere to the process laid out in the SOU. This process requires potential exporters to apply for approval, wait, and then obtain USG and GOI approval before they proceed. "Nothing will go outside of the mechanism the U.S. and Israel have established. There will be no surprises."

16. (C) Ben Hanan called for full clarity in the U.S.-Israeli dialogue on export controls, urging a "policy of full disclosure, not one of vague statements that hide intent," and of maintaining personal contact in order to prevent misunderstandings: "If you want to clarify something sensitive, please invite us to Washington, and we will come. Show us the facts, and then propose a solution. Let us commit to 'killing the tea kettle before it becomes a locomotive.'"

17. (C) Ben Hanan said that Israel understands that the USG wants Israel to stop defense exports to Venezuela. He said that Israel must fall in line with the U.S. on moral grounds. He claimed, however, that perceptions linger in Israel that the U.S. is using export controls to help U.S. industry compete against Israeli industry in the Venezuelan market.

18. (C) Ben Hanan said that Israel is cooperating with India on defense issues, and is pleased that the U.S. is entering India's defense market. He characterized Lockheed Martin's exhibit at a recent Indian defense exposition as impressive, and recounted how he had told Lockheed Martin Senior Vice President Bob Trice that Israel is willing to be a "mouse on the back of the American elephant" in terms of defense sales to India. Ben Hanan added that Pakistan has made several overtures to Israel, but Israel cannot consider them seriously as Pakistan is viewed by Israel as an ally of Iran.

19. (C) Ben Hanan said that the GOI would find it beneficial if the USG would approve some of its exports (e.g., flak jackets) to countries the U.S. is concerned about. Ben Hanan referred specifically to an Israeli bid for a tender issued by General Electric China for security services at the Beijing Olympics. He noted that allowing the bid to go through could potentially benefit an unnamed U.S. company as well as an Israeli one.

110. (C) Ben Hanan characterized Israel's defense industry as not only a business sector, but a critical part of Israel's defense capability. He said that Israel exports 80 percent of its defense production, and stressed that Israel's defense industry cannot survive on GOI/IDF procurement. Ben Hanan recounted that in 2005, Israel exported USD 750 million worth of defense articles to the U.S. He said that if the export value could be increased to USD 1 billion, this achievement would be more important to Israel than the USD 500 million worth of FMF Israel receives from the U.S.

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UNDER SECRETARY MCCORMICK'S POINTS TO THE SIBAT DIRECTOR  
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111. (C) Under Secretary McCormick stressed that America's relationship with Israel is important and strong, and that there is no truth behind the allegation that the U.S. is using export controls to promote its industries over other countries' industries. He noted that export controls are increasingly a part of the important U.S. nonproliferation agenda for the region, and that the Commerce Department works closely with the State Department and the Defense Department to ensure that their positions are coordinated. He offered the Commerce Department's assistance in implementing the comprehensive export controls outlined in the SOU.

112. (U) Also attending this restricted session on the Israeli side were SIBAT Principal Deputy Director Meir Shalit and SIBAT North America Division Deputy Director Amira Alany.

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EXPANDED MEETING WITH MOD EXPORT CONTROL EXPERTS  
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113. (U) Under Secretary McCormick then led a U.S. delegation in an expanded meeting on export controls with MOD experts.

The Israel side was led by MOD General Counsel Tzvia Gross and included: SIBAT Director Yosi Ben Hanan (until his departure for another meeting); SIBAT Principal Deputy Director Meir Shalit; SIBAT North America Division Deputy Director Amira Alany; Political-Military Bureau Adviser Shmuel Limone; MOD Deputy Director of Export Controls Ehud Ben-Aharon; MALMAB/DSDE Information Security Unit Head Shlomy Maayan; MOD Legal Counsel Gideon Meretz; MOD Legal Counsel Ram Raviv; MOD Encryption Expert Eitan Levy; and the MOD's director for Encryption Control.

14. (S) SIBAT Director Ben Hanan reiterated Israel's commitment to the SOU, and said that the MOD's reorganization of Israel's export control system will result in a smooth and transparent system in which policy-makers are understood, and the working level is accountable to policy-makers. He added that a smooth, transparent mechanism for dual-use items will be established. Ben Hanan said that Israel would coordinate its defense exports with the U.S. and always maintain open lines of communication in this area.

15. (C) Ben Hanan said that Hamas's victory in the January 25 Palestinian elections affects Israel's security and defense R&D. He stressed that Israel cannot stop investment in defense R&D, and cannot stop exporting defense articles, noting that defense exports remain critical to Israel's defensive capability.

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REVIEW OF CHANGES ALREADY MADE TO THE EXPORT CONTROL SYSTEM  
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16. (C) After Ben Hanan departed, MOD Legal Counsel Tzvia Gross led the Israeli side and explained that Israel's export control system had been running on a combination of emergency legislation and Israel's equivalent of U.S. executive orders. Gross said that Israel has already incorporated Wassenaar Arrangement Category Six controls for lasers and sensors into the MOD's control list, and that these entered into force in October 2005. The MOD controls this category now and may continue to control it for military end-users even after authority over dual-use items is transferred to the Ministry of Industry, Trade and Labor (MOITAL). The MOD has already conducted some outreach seminars to educate Israeli defense industry on new obligations stemming from the Category Six requirements. So-called "deemed exports" have been addressed in amendments to MOD regulations, and the new requirements have been briefed to Israeli defense industry representatives. Deemed exports will eventually be controlled under the new Defense Export Control Act, once the Knesset passes it. The MOD is also enacting enforcement measures -- including more extensive actions against violators -- through MOD directives.

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REVIEW OF PROPOSED EXPORT CONTROL LEGISLATION  
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17. (C) Gross said that MOD lawyers, in consultation with lawyers from the MFA, MOITAL and Justice Ministry, are drafting a Defense Export Control Act (DECA), and a Dual-Use Export Control Order (aka regulations or secondary legislation), and that the draft legislation has been circulated within the GOI. Gross admitted that the MFA is not yet satisfied with the current draft DECA. Gross said the MOD has an "ambitious target" of presenting the draft DECA to the Knesset's Defense Security Committee before Israeli general elections scheduled for March 28. (NOTE: The draft DECA was presented to the governmental legislation committee -- headed by the Ministry of Justice -- on March 29. It must pass out of that committee before it can be sent to the Knesset's Defense Security Committee. MFA contacts told poloff March 30 that they are disappointed with the draft DECA's provisions for MFA involvement in the export license review process and intend to fight for a more prominent role for the MFA. END NOTE.)

18. (C) Gross said that the new DECA will place authority for export controls in the hands of the MOD director general, who will delegate that authority to the director of a new Export Controls Division. The new division may be headed by the current Defense Export Controls director, Ehud Ben Aharon. SIBAT will still have an advisory role on export license issuance along with the POL-MIL Bureau, the Technical Committee, the Special Countries Committee, the Counterterrorism Committee (headed by MALMAB/DSDE), the MTCR Committee, and Customs and international export control authorities. The new division will coordinate with MOITAL. The MOD wants to launch the new Export Control Division by July 2007, but will need to obtain the Ministry of Finance's support for this before it can happen. The new division will be responsible for enforcement, but will be assisted by the Ministry of Justice, MALMAB/DSDE, and the MOD's Legal Adviser. MALMAB/DSDE will remain responsible for the protection of confidential information.

19. (C) Gross said that the new DECA will require exporters

to submit a "Statement of Ultimate End-User" in their application for an export license. This means that there will be three layers of requirements: (a) a statement by the exporter; (b) an end-user certificate; and (3) GOI assurances. These changes have already been adopted in the regulations and are in force and being used now. The DECA will also require brokers to obtain a license, and require defense exporters to submit regular reports on their activities.

120. (C) Regarding exports to PRC end-users, Gross said that the new law will require negotiating or marketing export licenses even if the end-user is civilian, and that Israeli industry representatives have already been briefed on this.

121. (C) Gross said that the MOD wants the DECA to boost criminal penalties, to include imprisonment and increased fines. She said she hopes to increase the fines through administrative penalties that would be applied outside the courts. At present, Israel can terminate or suspend a violating company's export license. The MOD wants to introduce a penalty that would remove an exporter from a registry of approved exporters. Gross claimed that the Ministry of Justice has agreed that a USD 1 million penalty may be applied outside the court system. The Knesset will have to approve this before it can enter into force. Under Secretary McCormick noted that Commerce is now pushing for

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increased penalties for violators of dual-use exports.

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DISCUSSION OF DUAL-USE REGS/LEGISLATION  
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122. (C) Gross said that MOITAL and the MOD agreed that the MOD will control dual-use items for military end-users for at least the first year after the dual-use legislation enters into force. She claimed that MOITAL believes that the MOD is more experienced with this, and noted that the MOD has been enforcing Missile Technology Control Regime (MTCR) Category 1 and 2, Nuclear Suppliers Group (NSG) and Australia Group (AG) requirements on Israeli exporters for some time. Gross said that the MOD decided a few days earlier that it should consider composing a list of "reliable countries" to expedite the dual-use export license issuance process. The MOD is checking to see how other countries do this now.

123. (S) Gross said that she believes that proposed exports to dual-use end-users in the PRC will be processed by the MOD because the PRC is special and handled according to the SOU. Proposed dual-use exports to end-users in other countries will be processed on a case-by-case basis by the MOD, MOITAL and MFA, except in the case of very basic categories. "Deemed exports" would also be covered in the new regulations.

124. (C) Gross said that she believes the new dual-use legislation can be approved expeditiously, without three full readings in the Knesset. She explained that, in its format as an order, the new dual-use regulations will not have to be sent to the governmental committee on legislation or undergo three full readings in the Knesset. Instead, MOITAL will present the Dual-Use Export Control Order to the Knesset's Economics Committee for approval. Gross acknowledged that the committee could decide that it should be presented as full legislation, in which case it would have to be resubmitted. She noted, however, that MOITAL has made a commitment to Acting PM Olmert to get the legislation through the Knesset as quickly as possible. If this is accomplished, it will allow the MOD and MOITAL to adopt the modified controlled items lists based on existing, non-emergency law. Gross admitted that this posed its own potential obstacles, as adopting the remaining Wassenaar Arrangement controls would affect 400-550 civilian companies that will not be familiar with the new requirements. She said that the MOD will try to manage the process through outreach, but cautioned that it will take time for these companies to adapt to the new requirements. Gross noted that the MOD has already started discussing this change with the companies in its first outreach session. She said that once managers are on board, the process should move more smoothly.

125. (C) Gross admitted that the MOD is having some difficulty drawing up the Wassenaar Arrangement control lists. She said the new legislation will incorporate the same terminology and definitions used by the Wassenaar Arrangement.

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HOW THE NEW LAW WILL DEAL WITH DISPUTES AND DENIALS  
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126. (C) Gross said the new legislation will establish a mechanism whereby the MOD, MFA and MOITAL will consult on export control cases. The MOD, MOITAL and MFA directors general -- and the Prime Minister if necessary -- will resolve disputes in the inter-ministerial process. Gross

said that the MOD is still discussing this issue with the MFA, and suggested that the MFA is not ready to review all export cases. She claimed that MOITAL is ready to cede the lead role to the MOD, and to be consulted only when the MOD is prepared to deny an export license.

127. (C) Gross said the following criteria would be reviewed in determining whether to award an export license: (a) the sensitivity of the export; (b) the end user; (c) the destination country; and (d) other issues, including UN embargoes, the destination country's respects for human rights, and the origin of the system or component and its country's requirements.

128. (S) Under Secretary McCormick thanked Gross and her team for their presentation on what he characterized as a very complex undertaking. He thanked the MOD for its initial work, offered USG assistance wherever it may be needed throughout the process, and stressed the importance the USG places on export control issues and the complete implementation of the SOU.

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ISRAELIS SHOW INTEREST IN U.S. CFIUS CASE  
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129. (C) Gross asked Under Secretary McCormick to share what he could about the Dubai Ports World case and the Committee for Foreign Investment in the U.S. (CFIUS). She said that Israel recently introduced legislation to require an inter-ministerial review of proposed foreign investments and acquisitions, and claimed it was her creation.

130. (C) In response, Under Secretary McCormick stressed that the division between defense exports and non-defense exports is increasingly blurry. U.S. defense industry is trying to diversify into the non-defense sector to hedge against future defense budget reductions, and a growing number of civilian technologies have military uses. The Commerce Department expects to continue to confront these issues as more capital crosses borders and more international acquisitions take place.

131. (C) The Under Secretary described the mission of CFIUS, and how it handles cases brought to its attention. He noted that normally, Treasury has the lead role on the body. He explained that CFIUS's role is being debated as some in the U.S. Congress are concerned that America's national security interests are not being fully represented. Under Secretary McCormick stressed that the USG wants to be open to foreign investment while ensuring first and foremost that its national security interests are protected, and that CFIUS members want to ensure that its reviews are non-political and comprehensive.

132. (U) Under Secretary McCormick cleared on this cable.

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